

ORIGINAL

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E-filing

DMR

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT HENLEY, an individual

Plaintiff,

vs.

HEINEKEN USA, a New York corporation, and
DOES 1 -50,

Defendants.

C 12

Case No.

4835

**NOTICE OF REMOVAL BASED ON
DIVERSITY OF CITIZENSHIP (28 U.S.C.
§§ 1332, 1441, 1446)**

1 **TO THE CLERK OF THE ABOVE-CAPTIONED COURT:**

2 **PLEASE TAKE NOTICE THAT** pursuant to 28 U.S.C. §§ 1332, 1441, and 1446,
3 Defendant Heineken USA Incorporated (“Defendant” or “Heineken”) (erroneously named in the
4 Complaint as “Heineken USA”), by its undersigned attorneys, hereby removes to this Court the
5 action entitled Robert Henley v. Heineken USA, Case No. CGC-12-523249 (the “State Court
6 Action”) from the Superior Court of the State of California, County of San Francisco, in which court
7 the State Court Action was filed. In support of this Notice of Removal, Defendant states as follows:

8 **Statement of Removal and Jurisdiction – Diversity**

9 1. On August 15, 2012, Plaintiff Robert Henley (“Plaintiff”) filed the State Court Action,
10 naming Heineken as a defendant.

11 2. Heineken was first served with a copy of Plaintiff’s Summons and Complaint in the
12 State Court Action via personal service on August 16, 2012. A true and correct conformed copy of
13 the Summons, Complaint and associated documents served on Heineken are attached hereto as
14 Exhibit 1. The Summons, Complaint, and associate documents that were filed by Plaintiff in San
15 Francisco Superior Court are attached hereto as Exhibit 2. The Proof of Service of Summons that
16 was filed by Plaintiff in San Francisco Superior Court is attached hereto as Exhibit 3. On September
17 13, 2012, Heineken filed an answer to Plaintiff’s Complaint in the State Court Action (the
18 “Answer”). A true and correct conformed copy of the Answer is attached hereto as Exhibit 4. The
19 attached exhibits constitute all of the pleadings served on Heineken, and filed by Heineken or
20 Plaintiff, in the State Court Action to date.

21 3. The State Court Action is a civil action of which this Court has original jurisdiction
22 under 28 U.S.C. § 1332 (diversity jurisdiction), and is one that may be removed to this Court by
23 Heineken pursuant to the provisions of 28 U.S.C. § 1441(b), in that it is a civil action between
24 citizens of different states, and the amount in controversy exceeds the sum of \$75,000.

25 4. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is
26 timely because it was filed within thirty (30) days of Heineken first being served with the Summons
27 and Complaint. The Summons and Complaint are the initial pleadings setting forth the claim for
28 relief on which this removal is based.

Citizenship of the Parties

5. Heineken alleges that at the time the State Court Action was filed and at the time of filing of this Notice of Removal, Plaintiff was, and still is, a citizen and a resident of the State of California. Complaint ¶ 3.

6. Heineken was incorporated under the laws of the State of New York on February 4, 1946. Heineken was, and still is, a duly formed New York corporation in good standing at the time the State Court Action was filed and at the time of filing of this Notice of Removal. Heineken's executive offices (corporate nerve center) are located in White Plains, New York, which is Heineken's principal place of business at the time the State Court Action was filed and at the time of filing of this Notice of Removal. Thus, Heineken is a citizen of the State of New York.

7. Given that Heineken is not a citizen of the State of California, diversity of citizenship exists between Plaintiff and Heineken.

Amount in Controversy

8. In his Complaint, Plaintiff seeks damages for loss of income, loss of earning capacity, loss of employment benefits, and mental and emotional distress. Complaint ¶ 27. Based on Plaintiff's last full year of employment with Heineken, Plaintiff earned approximately \$112,021.92 in wages as his base salary plus an additional \$18,140.01 in bonus payments. Additionally, Plaintiff received various job benefits from Heineken, including paid medical and other insurance benefits, as well as paid vacation on an annual basis. Plaintiff's Complaint alleges that he has not worked at Heineken since January 31, 2012. Thus, based on seven months since Plaintiff's termination date, this would amount to a claim by Plaintiff in excess of \$75,000 worth of alleged lost wages and benefits from Heineken to date.

9. Additionally, pursuant to his Complaint, Plaintiff is also seeking compensatory damages for future wage loss and mental and emotional distress, as well as punitive damages and attorneys' fees as provided by law. Complaint ¶¶ 27-29. Therefore, the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 2031 (N.D. Cal. 2002) (amount in controversy satisfied where plaintiff sought compensatory

1 damages, including lost wages, emotional distress damages, punitive damages, injunctive relief,
2 including attorneys' fees).

3 **Removal Procedures**

4 10. Removal is properly made to the United States District Court for the Northern District
5 of California under 28 U.S.C. § 1441(a), because the Superior Court of the State of California,
6 County of San Francisco, where the State Court Action is currently pending, is within the Northern
7 District of California.

8 11. The United States District Court for the Northern District of California has jurisdiction
9 over this case pursuant to 28 U.S.C. § 1332(a)(1), because the matter in controversy exceeds the sum
10 of \$75,000, exclusive of interest and costs, and the action is between citizens of different states.

11 12. A copy of this Notice of Removal will be filed with the Clerk of the San Francisco
12 County Superior Court, and a copy will also be served on the Plaintiff, as required by 28 U.S.C. §
13 1446(d).

14 **WHEREFORE**, Heineken respectfully requests the removal of the State Court Action from
15 the Superior Court of the State of California, County of San Francisco, to the United States District
16 Court for the Northern District of California.

17
18
19 Dated: September 13, 2012

K&L GATES LLP

By: 

Thomas H. Petrides

Nancy C. Hagan

Attorneys for Defendant Heineken USA Inc.

EXHIBIT 1



CORPORATION SERVICE COMPANY

Notice of Service of Process

Transmittal Number: 10232021
Date Processed: 08/17/2012

Primary Contact: Patricia Mercadante
Heineken USA Incorporated
360 Hamilton Avenue
Suite 1103
White Plains, NY 10601

Copy of transmittal only provided to: Julie Kinch

Entity:	Heineken USA Incorporated Entity ID Number 1957833
Entity Served:	Heineken USA, Inc.
Title of Action:	Robert Henley vs. Heineken USA
Document(s) Type:	Summons/Complaint
Nature of Action:	Discrimination
Court/Agency:	San Francisco County Superior Court, California
Case/Reference No:	CGC-12-523249
Jurisdiction Served:	California
Date Served on CSC:	08/16/2012
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Mark C. Thomas 415-986-1338

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

HEINEKEN USA, INC., a New York corporation, and DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
ROBERT HENLEY, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94111

CASE NUMBER
(Número del caso)

CC-12-523249

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Mark C. Thomas, 353 Sacramento St., Ste 1140, San Francisco, CA 94111, 415.986.1338

DATE:
(Fecha)

AUG 15 2012

CLERK OF THE COURT

Clerk, by
(Secretario)Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

ELIAS BUTI

(REAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):
Heineken USA, Inc., a New York Corporation
- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

BY FAX

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Brownstein Thomas, LLP Mark C. Thomas (SBN 215580) 353 Sacramento Street, Suite 1140 San Francisco, CA 94111 TELEPHONE NO: 415.986.1338 FAX NO: 415.986.1231 ATTORNEY FOR (Name): Plaintiff Robert Henley		ENDORSED FILED SAN FRANCISCO COUNTY SUPERIOR COURT 2012 AUG 15 AM 1:11 CLERK OF COURT BY: ELIAS BUTT DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME:		
CASE NAME: Henley v. Heineken USA, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: CGC-12-523249 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (35) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 8.15.2012

Mark C. Thomas

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

NOTICE	
• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.	
Form Adopted for Mandatory Use Judicial Council of California CM-010 (Rev. July 1, 2007)	CIVIL CASE COVER SHEET Page 1 of 2 Cal. Rules of Court, rules 3.220, 3.220.5, 3.400-3.403, 3.740; Cal. Standards of Judicial Administration, std. 3.10 www.courtinfo.ca.gov

1 BROWNSTEIN THOMAS, LLP
2 MARK C. THOMAS SBN: 215580
3 353 Sacramento Street, Suite 1140
4 San Francisco, CA 94111
5 Telephone: 415-986-1338
6 Facsimile: 415-986-1231

7 Attorneys for Plaintiff
8 Robert Henley

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2012 AUG 15 AM 1:11

CLERK OF THE COURT
BY: ELIAS BLITZ
DEPUTY CLERK

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION

12 ROBERT HENLEY, an individual,

13 Plaintiff,

14 vs.

15 HEINEKEN USA, a New York corporation,
16 and DOES 1-50,

17 Defendants

Case No.: CGC-12-523249

PLAINTIFF'S COMPLAINT FOR
EMPLOYMENT DISCRIMINATION IN
VIOLATION OF THE FAIR
EMPLOYMENT AND HOUSING ACT

BY FAX

18 Plaintiff Robert Henley (hereinafter "Plaintiff" or "Henley"), an individual, through his
19 attorneys of record, hereby alleges and complains as follows:

20 JURISDICTION AND VENUE

21 1. The San Francisco County Superior Court has jurisdiction in this matter
22 due to the violations of the California Government Code alleged against defendants occurred in
23 the state of California.

24 2. Venue as to each defendant is proper in this judicial district, pursuant to
25 California Code of Civil Procedure Sections 395(a) and 395.5, and Business & Professions Code
26 Section 17203. Plaintiff performed work for Defendant in San Francisco. Furthermore, each
27 defendant either maintains an office, transacts business, has an agent, or is found in the County
28

1 of San Francisco, and each defendant is within the jurisdiction of this Court for the purposes of
2 service of process.

3 **PARTIES**

4 3. Plaintiff Robert Henley is an individual over the age of eighteen (18) and
5 is now, and at all times mentioned in this Complaint, was a resident of California.

6 4. Defendant Heineken USA, Inc. (hereinafter referred to as "Heineken") is a
7 corporation organized and existing under New York law, and authorized to conduct business in
8 California.

9 5. At all relevant times Heineken has been an employer subject to suit under
10 the California Fair Employment and Housing Act ("FEHA").

11 6. Plaintiff is ignorant of the true names and capacities of defendants sued
12 herein as DOES 1-50 and therefore sues these defendants by such fictitious names. Plaintiff will
13 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
14 informed and believes and thereon alleges that each of these fictitiously named defendants is in
15 some manner responsible in some manner for the occurrences herein alleged and that Plaintiff's
16 injuries as herein alleged were proximately caused by the aforementioned defendants.

17 7. Plaintiff is informed and believes and thereon alleges that at all relevant
18 times each of the defendants was the agent, employee, partner, joint venturer, of each of the
19 remaining defendants, in doing the things hereinafter alleged they were acting within the course
20 and scope of such agency, employment, partnership, and joint venture, and, they authorized,
21 ratified, aided, abetted, encouraged, and counseled the doing of the things hereinafter alleged.

22 **GENERAL ALLEGATIONS**

23 8. In June of 2001, Henley commenced his career with Heineken. He
24 performed his job well and consistently received merit pay increases and bonuses.

25 9. In approximately September 2008, Chris Brown ("Brown") was hired to
26 be Henley's supervisor.

27 10. Heineken gives annual performance reviews each year. The performance
28 review has two components. The first component is performance objectives, which is a purely

1 quantifiable rating measuring whether the employee met his sales goals. The second component
2 is competencies, which is more subjective rating system. The two components are combined
3 based on a performance matrix to determine the employee's overall rating.

4 11. In 2010 Brown completed Henley's performance review. Henley was
5 given a "good" rating in his performance objectives, meaning he met his sales goals. However,
6 he was given a "needs improvement" rating on his competencies. Based on the Heineken
7 performance matrix, an employee who receives a "good" rating on the objective performance
8 objectives and a "needs improvement" rating on the subjective competencies should receive an
9 overall performance rating of "good." Thus, Henley should have received an overall
10 performance result of "good." Brown, however, disregarded the performance matrix gave
11 Henley and overall performance rating of "needs improvement." As a result of this lower
12 performance rating, Henley did not receive a salary increase in 2011.

13 12. Shortly after the 2010 performance review was issued, on March 14, 2011
14 Brown placed Henley on a performance improvement plan purportedly based on the same
15 subjective competencies contained in the 2010 performance review. The performance
16 improvement plan set forth clear, non-subjective goals, Henley needed to meet to be taken off
17 the performance improvement plan.

18 13. Henley met the clear, non-subjective goals set forth in his performance
19 improvement plan. As a result, on July 12, 2011 he was taken off the performance improvement
20 plan.

21 14. On or around September 2011, Henley received his mid-year review,
22 which rated his performance as good.

23 15. On or around January 31, 2012, Henley was called into a meeting with
24 Brown. During the meeting, Brown told Henley that he would receive an overall performance
25 rating of "needs improvement" for the 2011 year. Heineken has a policy that if an employee
26 receives two performance improvements in a row the employee is terminated. Thus, Brown
27 informed Henley that his employment was terminated because he received two overall "needs
28 improvement" ratings in a row.

1 16. Heineken's s proffered reason for Henley's termination is a pretext to
2 terminate him because of his race. Henley should not have received two overall "needs
3 improvement" performance ratings in a row. Pursuant to Heineken's performance matrix,
4 Henley should have received an overall good performance rating in 2010.

5 17. Employees who were not African American were not downgraded on the
6 subjective competencies component of the performance review. Furthermore, Heineken did not
7 disregard the performance matrix to downgrade employees who were not African American on
8 their overall performance rating. Henley is informed and believes and thereon alleges that
9 Heineken has a practice and pattern of discriminating against African American employees. In
10 the ten years Henley worked for Heineken, he was the only African American person ever hired
11 and the only African American to work for Heineken out of the hundreds of employees that
12 worked in Heineken's western region.

13 18. Heineken discriminated against Henley by denying him a merit based pay
14 raise in 2011 and terminating his employment in 2012.

15 19. Henley has exhausted all administrative requirements prior to filing this
16 lawsuit. Copies of his right to sue letter are attached hereto as Exhibit A.

17 **FIRST CLAIM FOR RELIEF**

18 **RACE DISCRIMINATION**

19 **(California Gov't Code § 12945 et seq.)**

20 20. Sain incorporates herein each of the foregoing paragraphs as though fully
21 set forth herein.

22 21. The California Fair Employment and Housing Act prohibits an employer
23 from discriminating against any employee because of their race. Henley, an African-American,
24 is a member of a protected class as defined by the FEHA.

25 22. Henley was employed by Heineken from 2001 until he was terminated on
26 January 31, 2012.

27 23. In 2010 Brown completed Henley's performance review. Henley was
28 given a "good" rating in his performance objectives, meaning he met his sales goals. However,

1 he was given a "needs improvement" rating on his competencies. Based on the Heineken
2 performance matrix, an employee who receives a "good" rating on the objective performance
3 objectives and a "needs improvement" rating on the subjective competencies should receive an
4 overall performance rating of "good." Thus, Henley should have received an overall
5 performance result of "good." Brown, however, disregarded the performance matrix gave
6 Henley and overall performance rating of "needs improvement." As a result of this lower
7 performance rating, Henley did not receive a salary increase in 2011.

8 24. On January 31, 2012, Henley's employment was terminated for allegedly
9 receiving two overall "needs improvement performance" ratings in a row. Heineken's proffered
10 reason for Henley's termination is a pretext to terminate him because of his race. Henley should
11 not have received two overall "needs improvement" performance ratings in a row. Pursuant to
12 Heineken's performance matrix, Henley should have received an overall good performance
13 rating in 2010.

14 25. Employees who were not African American were not downgraded on the
15 subjective competencies component of the performance review. Furthermore, Heineken did not
16 disregard the performance matrix to downgrade employees who were not African American on
17 their overall performance rating. Henley is informed and believes and thereon alleges that
18 Heineken has a practice and pattern of discriminating against African American employees. In
19 the ten years Henley worked for Heineken, he was the only African American person ever hired
20 and the only African American to work for Heineken out of the hundreds of employees that
21 worked in Heineken's western region.

22 26. Heineken discriminated against Henley by denying him a merit based pay
23 raise in 2011 and terminating his employment in 2012.

24 27. As a result of this unlawful termination and Heineken's illegal conduct,
25 Henley has suffered and will continue to suffer loss of income, loss of earning capacity, loss of
26 employment benefits, mental and emotional distress, and other damages in an amount according
27 to proof.
28

1 28. In denying Henley's merit raise and terminating Henley as described
2 herein, Heineken acted with oppression, fraud and malice, in conscious derogation of Henley's
3 rights under applicable law. Henley is entitled to punitive damages in an amount to be
4 determined at trial, which amount would be appropriate to punish or set an example of
5 Defendants.

6 29. WHEREFORE, Plaintiff prays for relief as set forth below.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Henley prays for judgment against Heineken herein as follows:

- 9 1. Compensatory damages in an amount to be proven at a trial by jury.
- 10 2. Pre-judgment and post-judgment interest as allowed pursuant to statutory and
- 11 common law.
- 12 3. Exemplary and punitive damages in an amount sufficient to punish Heineken and
- 13 make an example out of it.
- 14 4. Henley's taxable costs and expenses of litigation including, but not limited to,
- 15 attorneys' fees pursuant to statutory and common law.
- 16 5. Such other relief as the Court deems just.

17 ///

18 BROWNSTEIN & THOMAS, LLP

19 DATED: August 15, 2012


20
21 
22 MARK C. THOMAS
23 Attorney for Plaintiff
24 Robert Henley
25
26
27
28

EXHIBIT A



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

GOVERNOR EDMUND G. BROWN JR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 | Videophone (916) 226-5285 | TDD (800) 700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

August 15, 2012

Robert Henley
119 Sucamore Ave.
South San Francisco, CA 94080

RE: 26828-13481 - Henley Robert - Right To Sue

Notice of Case Closure and Right to Sue

Dear Robert Henley:

This letter informs you that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 15, 2012 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Department of Fair Employment and Housing

cc: Maggie Timony, Agent for Service for Heineken USA, Inc.



**CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
EMPLOYMENT**

COMPLAINT OF DISCRIMINATION UNDER THE PROVISIONS OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

DFEH INQUIRY NUMBER:
26828-13481

COMPLAINANT NAME:
Robert Hanley

TELEPHONE NUMBER:
(650) 219-3576

ADDRESS:
119 Sucamore Ave.

CITY/STATE/ZIP:
South San Francisco, CA 94080

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

RESPONDENT NAME:
Helneken USA, Inc.

AGENT FOR SERVICE NAME:
Maggie Timony

TELEPHONE NUMBER:
(914) 681-4100

ADDRESS (AGENT FOR SERVICE):
360 HAMILTON AVENUE, Suite 1103

CITY/STATE/ZIP:
White Plains, NY 10601

NO. OF EMPLOYEES/MEMBERS:
500

DATE MOST RECENT DISCRIMINATION TOOK PLACE:
Jan 31, 2012

TYPE OF EMPLOYER:
Private Employer

CO-RESPONDENT(S):

NAME	ADDRESS	PHONE NUMBER
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I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right to sue. I understand that if I want a federal right to sue notice, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure and Right to Sue," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Immediate Right to Sue."

By submitting this complaint, I am declaring under penalty of perjury under the laws of the State of California that, to the best of my knowledge, all information contained in this complaint is true and correct, except matters stated on my information and belief, and I declare that those matters I believe to be true.

Dated August 15, 2012 At South San Francisco

Verified By: Mark C. Thomas attorney for complainant

DFEH-300-030 (07/12)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DATE FILED: Aug 14, 2012
COMPLETED: Aug 15, 2012

STATE OF CALIFORNIA

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CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
EMPLOYMENT

COMPLAINT OF DISCRIMINATION UNDER THE PROVISIONS OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

I ALLEGED THAT I EXPERIENCED:
Discrimination

ON OR BEFORE: Jan 31, 2012

BECAUSE OF MY Color, Race
ACTUAL OR
PERCEIVED:

AS A RESULT, I WAS:

Terminated, Other
denied a merit pay raise

STATE WHAT YOU BELIEVE TO BE THE REASON(S) FOR DISCRIMINATION:

In June of 2001, Henley commenced his career with Heineken. He performed his job well and consistently received merit pay increases and bonuses. In approximately September 2008, Chris Brown ("Brown") was hired to be Henley's supervisor. Heineken gives annual performance reviews each year. The performance review has two components. The first component is performance objectives, which is a purely quantifiable rating measuring whether the employee met his sales goals. The second component is competencies, which is more subjective rating system. The two components are combined based on a performance matrix to form an overall rating. In 2010 Brown completed Henley's performance review. Henley was given a "good" rating in his performance objectives, meaning he met his sales goals. However, he was given a "needs improvement" rating on his competencies. Based on the Heineken performance matrix, an employee who receives a "good" rating on the objective performance objectives and a "needs improvement" rating on the subjective competencies should receive an overall performance rating of "good." Thus, Henley should have received an overall performance result of "good." Brown, however, disregarded the performance matrix and gave Henley an overall performance rating of "needs improvement." As a result of this lower performance rating, Henley did not receive a salary increase in 2011. Shortly after the 2010 performance review was issued, on March 14, 2011 Brown placed Henley on a performance improvement plan purportedly based on the same subjective competencies contained in the 2010 performance review. The performance improvement plan set forth clear, non-subjective goals. Henley needed to meet to be taken off the performance improvement plan. Henley met the clear, non-subjective goals set forth in his performance improvement plan. As a result, on July 12, 2011 he was taken off the performance improvement plan. On or around September 2011, Henley received his mid-year review, which rated his performance as good. On or around January 31, 2012, Henley was called into a meeting with Brown. During the meeting, Brown told Henley that he would receive an overall performance rating of "needs improvement" for the 2011 year. Heineken has a policy that if an employee receives two performance improvements in a row the employee is terminated. Thus, Brown informed Henley that his employment was terminated because he received two overall "needs improvement" ratings in a row. Heineken's proffered reason for Henley's termination is a pretext to terminate him because of his race. Henley should not have received two overall "needs improvement" performance ratings in a row. Pursuant to Heineken's performance matrix, Henley should have received an overall good performance rating in 2010. Employees who were not African American were not downgraded on the subjective competencies component of the performance review. Furthermore, Heineken did not disregard the performance matrix to downgrade employees who were not African American on their overall performance rating. Henley is informed and believes and thereon alleges that Heineken has a practice and pattern of discriminating against African American employees. In the ten years Henley worked for Heineken, he was the only African American person ever hired and the only African American to work for Heineken out of the hundreds of employees that worked in Heineken's western region. As a result, Heineken discriminated against Henley by denying him a merit based pay raise in 2011 and terminating his employment in 2012.

CASE NUMBER: CGC-12-523249 ROBERT HENLEY VS. HEINEKEN USA, A NEW YORK COF

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: JAN-16-2013

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

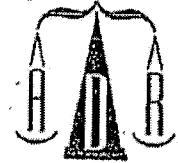
[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California, County of San Francisco Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-982-1600 or www.sfbar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3876

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

1) EARLY SETTLEMENT CONFERENCES

The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): This program, provided in conjunction with the court, pairs parties with a two-member volunteer attorney panel. The panels are comprised of one plaintiff and one defense attorney, each with at least 10 years of trial experience. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist.

Operation: The settlement conference typically occurs 2 to 3 months prior to the trial date. BASF informs the participants of the conference date well in advance and provides the names of the panelists and location of the conference approximately 2 weeks prior to the conference. Panelists provide at no cost up to 2 hours of their time at each conference, and many panelists provide additional time at no cost if a settlement is imminent. A conference typically begins with a brief meeting with all parties and their attorneys during which each side presents an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of their cases, utilizing private meetings as appropriate. If a case does not settle during the first two hours, parties have the option to hire the panelists to continue the conference.

Cost: BASF charges an administrative fee of \$250 per party. For information on fees for cases involving multiple parties, please contact BASF. Parties who meet certain eligibility requirements may request a waiver of the fee. For more information, please contact BASF's ESP Coordinator at 415-782-9000 ext. 8717 or visit www.sfbbar.org/esp.

(B) COURT SETTLEMENT CONFERENCE: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement, before incurring the expense of going to court, that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law. A mediator strives to bring the parties to a mutually beneficial settlement of the dispute.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: A mediator provides at no cost one hour of preparation time and two hours of mediation time. After those three hours, if the case is not resolved, parties have the option to continue the process and pay the mediator at his or her regular hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties may select a specific mediator or BASF will help the parties make a selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process.

Cost: BASF charges an administrative fee of \$250 per party. For information on fees for cases involving multiple parties, please contact BASF. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Parties who meet certain eligibility requirements may request a waiver of the fee. For more information, please contact BASF's Mediation Coordinator at 415-782-9000 ext. 8787 or visit www.sfbar.org/mediation.

(B) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private mediation. Parties may elect any private mediator or mediation organization of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION: When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

Operation: Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the court's Arbitration Panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 30 days after the arbitrator's award has been filed.

Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Cost: There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: DEPARTMENT 810

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- ☐ Early Settlement Program of the Bar Association of San Francisco (BASF) - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$250 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. www.sfbar.org/esp
- ☐ Mediation Services of BASF - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$250 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation
- ☐ Private Mediation - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- ☐ Judicial Arbitration - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org
- ☐ Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

 Name of Party Stipulating

 Name of Party Stipulating

 Name of Party or Attorney Executing Stipulation

 Name of Party or Attorney Executing Stipulation

 Signature of Party or Attorney

 Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Dated: _____

☐ Additional signature(s) attached

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____		
CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: _____
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted jointly by parties (names):
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. Service (to be answered by plaintiffs and cross-complainants only)
 - a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. Description of case
 - a. Type of case in ☐ complaint ☐ cross-complaint (Describe, including causes of action):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date (indicate source and amount), estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. ☐ days (specify number):

b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available).

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form are willing to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (specify):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

PLAINTIFF/PETITIONER:	CASE NUMBER: CM-110
DEFENDANT/RESPONDENT:	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (explain):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (specify):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 13a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

15. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (describe all anticipated discovery):
- | | | |
|--------------|--------------------|-------------|
| <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

_____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF PARTY OR ATTORNEY)
_____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

EXPERIENCED MEDIATORS ARE AVAILABLE IN THE FOLLOWING AREAS

Business
Civil Rights
Commercial
Construction
Contracts
Disability
Discrimination
Education
Employment/Workplace
Environmental
Family
Family Certified Specialists
Fee Disputes
Financial
Government
Insurance
Intellectual Property
Intra-Organizational
Labor
Landlord/Tenant
Land Use
LGBT Issues
Malpractice/Legal/Medical/Professional
Partnership Dissolutions
Personal Injury
Probate/Trust
Products Liability
Real Estate
Securities
Taxation
Uninsured/Motorist
Women's Issues
And more...

TESTIMONIALS

"This was the third attempt to mediate this case, and the BASF mediator was far and away the best mediator. I dare say that we would not have settled today but for his efforts."

George Yuhas, Esq.
Orrick, Herrington & Sutcliffe LLP

"We had an excellent experience and, after 8 1/2 hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

Robert Charles Friese, Esq.
Shortis Friese LLP

"When the other side made their offer, I thought there was no way we would reach an agreement - we were too far apart, but the mediator brought us together. He saved me a lot of time and aggravation by facilitating a settlement. Thanks!"

Leslie Caplan
Global Warming Campaign Manager,
Bluewater Network

"BASF staff was very helpful - stayed on the task and kept after a hard to reach party. The mediator was great!"

Mark Abelson, Esq.
Campagnoli, Abelson & Campagnoli

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

Denise A. Leadbetter, Esq.
Zacks, Uirecht & Leadbetter

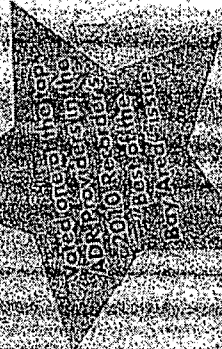
PROCEDURES/PODCASTS,
FORMS/MEDIATOR BIOGRAPHIES
AND PHOTOGRAPHS

www.adrbar.org/mediators
adr@sfbar.org or 415-982-1600



THE BAR ASSOCIATION OF
SAN FRANCISCO

MEDIATION SERVICES



MEDIATION SERVICES

QUALITY • EXPERIENCE • TRUST

WHAT IS BASF'S MEDIATION SERVICE?

The Bar Association of San Francisco's Mediation Services is a private mediation service which will assist you with almost any type of dispute, from simple contract disputes to complex commercial matters.

WHO ARE THE MEDIATORS?

They are established mediators who have private mediation practices and have met our extensive experience requirements. By going through BASF you receive the services of these highly qualified mediators at a great value.

HOW DO I LEARN MORE ABOUT THE MEDIATORS?

BASF's website (www.sfbat.org/mediation) provides bios, photos and hourly rates of mediators. You can search by name or by area of law needed for your case. BASF staff is also always available to assist you with selection or to answer questions.

HOW MUCH DOES THE SERVICE COST?

A \$250 per party administrative fee is paid to BASF at the time the Consent to Mediate form is filed. This fee covers the first hour of mediator preparation time and the first two hours of session time. Time beyond that is paid at the mediator's normal hourly rate.

HOW IS THE MEDIATOR CHOSEN?

You may request a specific mediator from our website (www.sfbat.org/mediation) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF staff to assist with the selection.

WHY SHOULD I GO THROUGH BASF? CAN'T I JUST CALL THE MEDIATOR DIRECTLY?

BASF mediators have agreed to provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the free hours unless you notify us. Once you have filed with us, you will talk directly to the mediator to ask questions and to set a convenient mediation date and time.

HOW LONG IS THE MEDIATION SESSION?

The time spent in mediation will vary depending on your dispute. BASF mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

WHO CAN USE THE SERVICE?

BASF mediation can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during a court action.

OUR CASE IS FILED IN COURT; HOW DO WE USE BASF'S MEDIATION SERVICES?

When you file the San Francisco Superior Court's Stipulation to ADR form, check the box indicating "Mediation Services of BASF." Then complete BASF's Consent to Mediate form found on our website and file it with us. (If the matter was filed in a different county, please check with that court for the appropriate process.)

WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDiate?

Once all parties have filed all the paperwork, BASF can normally have you in touch with the mediator within a day or two. If there is a deadline, BASF staff will give the matter top priority.

WHAT TYPES OF DISPUTES CAN I MEDiate?

BASF mediators are trained in 30+ areas of law. If you don't see the area you need on our website or in this brochure, contact us; it is very likely we can match your need with one of our panelists.

MORE INFORMATION

Visit our website (www.sfbat.org/mediation) where you can search by name or by area of law. For personal assistance, please call 415-982-1600.

WWW.SFBAT.ORG/MEDIATION • ADR@SFBAT.ORG • 415.982.1600

EXHIBIT 2



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Aug-15-2012 11:41 am

Case Number: CGC-12-523249

Filing Date: Aug-15-2012 11:37

Filed by: ELIAS BUTT

Juke Box: 001 Image: 03725664

COMPLAINT

ROBERT HENLEY VS. HEINEKEN USA, A NEW YORK CORPORATION et al

001C03725664

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

HEINEKEN USA, INC., a New York corporation, and DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
ROBERT HENLEY, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94111

CASE NUMBER:
(Número del Caso).

CGC-12-523249

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Mark C. Thomas, 353 Sacramento St., Ste 1140, San Francisco, CA 94111, 415.986.1338

DATE:
(Fecha)

AUG 15 2012

CLERK OF THE COURT

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

ELIAS BUTT

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

BY FAX



CM-010

FOR COURT USE ONLY

FILED
Superior Court of California
County of San Francisco

AUG 15 2012

CLERK OF THE COURT

BY: Elis RJA
Deputy Clerk

CASE NUMBER:

CGC-12-523249

JUDGE:

DEPT:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Brownstein Thomas, LLP

Mark C. Thomas (SBN 215580)

353 Sacramento Street, Suite 1140

San Francisco, CA 94111

TELEPHONE NO: 415.986.1338

FAX NO: 415.986.1231

ATTORNEY FOR (Name): Plaintiff Robert Henley

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, 94102

BRANCH NAME:

CASE NAME:

Henley v. Heineken USA, Inc.

CIVIL CASE COVER SHEET

- ☒ **Unlimited** (Amount demanded exceeds \$25,000) ☐ **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation

- ☐ **Counter** ☐ **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- ☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- ☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

- ☒ Wrongful termination (36)
☐ Other employment (15)

Contract

- ☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

- ☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

- ☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

- ☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

- ☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 1

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 8.15.2012

Mark C. Thomas

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

SUMMONS ISSUED

FILED

Superior Court of California
County of San Francisco

AUG 15 2012

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

BROWNSTEIN THOMAS, LLP
MARK C. THOMAS SBN: 215580
353 Sacramento Street, Suite 1140
San Francisco, CA 94111
Telephone: 415-986-1338
Facsimile: 415-986-1231

Attorneys for Plaintiff
Robert Henley

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

ROBERT HENLEY, an individual,
Plaintiff,

vs.

HEINEKEN USA, a New York corporation,
and DOES 1-50,
Defendants

Case No.: **CGC-12-523249**

**PLAINTIFF'S COMPLAINT FOR
EMPLOYMENT DISCRIMINATION IN
VIOLATION OF THE FAIR
EMPLOYMENT AND HOUSING ACT**

BY FAX

Plaintiff Robert Henley (hereinafter "Plaintiff" or "Henley"), an individual, through his attorneys of record, hereby alleges and complains as follows:

JURISDICTION AND VENUE

1. The San Francisco County Superior Court has jurisdiction in this matter due to the violations of the California Government Code alleged against defendants occurred in the state of California.

2. Venue as to each defendant is proper in this judicial district, pursuant to California Code of Civil Procedure Sections 395(a) and 395.5, and Business & Professions Code Section 17203. Plaintiff performed work for Defendant in San Francisco. Furthermore, each defendant either maintains an office, transacts business, has an agent, or is found in the County

1 of San Francisco, and each defendant is within the jurisdiction of this Court for the purposes of
2 service of process.

3 **PARTIES**

4 3. Plaintiff Robert Henley is an individual over the age of eighteen (18) and
5 is now, and at all times mentioned in this Complaint, was a resident of California.

6 4. Defendant Heineken USA, Inc. (hereinafter referred to as "Heineken") is a
7 corporation organized and existing under New York law, and authorized to conduct business in
8 California.

9 5. At all relevant times Heineken has been an employer subject to suit under
10 the California Fair Employment and Housing Act ("FEHA").

11 6. Plaintiff is ignorant of the true names and capacities of defendants sued
12 herein as DOES 1-50 and therefore sues these defendants by such fictitious names. Plaintiff will
13 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
14 informed and believes and thereon alleges that each of these fictitiously named defendants is in
15 some manner responsible in some manner for the occurrences herein alleged and that Plaintiff's
16 injuries as herein alleged were proximately caused by the aforementioned defendants.

17 7. Plaintiff is informed and believes and thereon alleges that at all relevant
18 times each of the defendants was the agent, employee, partner, joint venturer, of each of the
19 remaining defendants, in doing the things hereinafter alleged they were acting within the course
20 and scope of such agency, employment, partnership, and joint venture, and, they authorized,
21 ratified, aided, abetted, encouraged, and counseled the doing of the things hereinafter alleged.

22 **GENERAL ALLEGATIONS**

23 8. In June of 2001, Henley commenced his career with Heineken. He
24 performed his job well and consistently received merit pay increases and bonuses.

25 9. In approximately September 2008, Chris Brown ("Brown") was hired to
26 be Henley's supervisor.

27 10. Heineken gives annual performance reviews each year. The performance
28 review has two components. The first component is performance objectives, which is a purely

1 quantifiable rating measuring whether the employee met his sales goals. The second component
2 is competencies, which is more subjective rating system. The two components are combined
3 based on a performance matrix to determine the employee's overall rating.

4 11. In 2010 Brown completed Henley's performance review. Henley was
5 given a "good" rating in his performance objectives, meaning he met his sales goals. However,
6 he was given a "needs improvement" rating on his competencies. Based on the Heincken
7 performance matrix, an employee who receives a "good" rating on the objective performance
8 objectives and a "needs improvement" rating on the subjective competencies should receive an
9 overall performance rating of "good." Thus, Henley should have received an overall
10 performance result of "good." Brown, however, disregarded the performance matrix gave
11 Henley and overall performance rating of "needs improvement." As a result of this lower
12 performance rating, Henley did not receive a salary increase in 2011.

13 12. Shortly after the 2010 performance review was issued, on March 14, 2011
14 Brown placed Henley on a performance improvement plan purportedly based on the same
15 subjective competencies contained in the 2010 performance review. The performance
16 improvement plan set forth clear, non-subjective goals, Henley needed to meet to be taken off
17 the performance improvement plan.

18 13. Henley met the clear, non-subjective goals set forth in his performance
19 improvement plan. As a result, on July 12, 2011 he was taken off the performance improvement
20 plan.

21 14. On or around September 2011, Henley received his mid-year review,
22 which rated his performance as good.

23 15. On or around January 31, 2012, Henley was called into a meeting with
24 Brown. During the meeting, Brown told Henley that he would receive an overall performance
25 rating of "needs improvement" for the 2011 year. Heineken has a policy that if an employee
26 receives two performance improvements in a row the employee is terminated. Thus, Brown
27 informed Henley that his employment was terminated because he received two overall "needs
28 improvement" ratings in a row.

1 16. Heineken's s proffered reason for Henley's termination is a pretext to
2 terminate him because of his race. Henley should not have received two overall "needs
3 improvement" performance ratings in a row. Pursuant to Heineken's performance matrix,
4 Henley should have received an overall good performance rating in 2010.

5 17. Employees who were not African American were not downgraded on the
6 subjective competencies component of the performance review. Furthermore, Heineken did not
7 disregard the performance matrix to downgrade employees who were not African American on
8 their overall performance rating. Henley is informed and believes and thereon alleges that
9 Heineken has a practice and pattern of discriminating against African American employees. In
10 the ten years Henley worked for Heineken, he was the only African American person ever hired
11 and the only African American to work for Heineken out of the hundreds of employees that
12 worked in Heineken's western region.

13 18. Heineken discriminated against Henley by denying him a merit based pay
14 raise in 2011 and terminating his employment in 2012.

15 19. Henley has exhausted all administrative requirements prior to filing this
16 lawsuit. Copies of his right to sue letter are attached hereto as Exhibit A.

17 **FIRST CLAIM FOR RELIEF**

18 **RACE DISCRIMINATION**

19 **(California Gov't Code § 12945 et seq.)**

20 20. Sain incorporates herein each of the foregoing paragraphs as though fully
21 set forth herein.

22 21. The California Fair Employment and Housing Act prohibits an employer
23 from discriminating against any employee because of their race. Henley, an African-American,
24 is a member of a protected class as defined by the FEHA.

25 22. Henley was employed by Heineken from 2001 until he was terminated on
26 January 31, 2012.

27 23. In 2010 Brown completed Henley's performance review. Henley was
28 given a "good" rating in his performance objectives, meaning he met his sales goals. However,

1 he was given a "needs improvement" rating on his competencies. Based on the Heineken
2 performance matrix, an employee who receives a "good" rating on the objective performance
3 objectives and a "needs improvement" rating on the subjective competencies should receive an
4 overall performance rating of "good." Thus, Henley should have received an overall
5 performance result of "good." Brown, however, disregarded the performance matrix gave
6 Henley and overall performance rating of "needs improvement." As a result of this lower
7 performance rating, Henley did not receive a salary increase in 2011.

8 24. On January 31, 2012, Henley's employment was terminated for allegedly
9 receiving two overall "needs improvement performance" ratings in a row. Heineken's proffered
10 reason for Henley's termination is a pretext to terminate him because of his race. Henley should
11 not have received two overall "needs improvement" performance ratings in a row. Pursuant to
12 Heineken's performance matrix, Henley should have received an overall good performance
13 rating in 2010.

14 25. Employees who were not African American were not downgraded on the
15 subjective competencies component of the performance review. Furthermore, Heineken did not
16 disregard the performance matrix to downgrade employees who were not African American on
17 their overall performance rating. Henley is informed and believes and thereon alleges that
18 Heineken has a practice and pattern of discriminating against African American employees. In
19 the ten years Henley worked for Heineken, he was the only African American person ever hired
20 and the only African American to work for Heineken out of the hundreds of employees that
21 worked in Heineken's western region.

22 26. Heineken discriminated against Henley by denying him a merit based pay
23 raise in 2011 and terminating his employment in 2012.

24 27. As a result of this unlawful termination and Heineken's illegal conduct,
25 Henley has suffered and will continue to suffer loss of income, loss of earning capacity, loss of
26 employment benefits, mental and emotional distress, and other damages in an amount according
27 to proof.

1 28. In denying Henley's merit raise and terminating Henley as described
2 herein, Heineken acted with oppression, fraud and malice, in conscious derogation of Henley's
3 rights under applicable law. Henley is entitled to punitive damages in an amount to be
4 determined at trial, which amount would be appropriate to punish or set and example of
5 Defendants.

6 29. WHEREFORE, Plaintiff prays for relief as set forth below.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Henley prays for judgment against Heineken herein as follows:

- 9 1. Compensatory damages in an amount to be proven at a trial by jury.
- 10 2. Pre-judgment and post-judgment interest as allowed pursuant to statutory and
11 common law.
- 12 3. Exemplary and punitive damages in an amount sufficient to punish Heineken and
13 make an example out of it.
- 14 4. Henley's taxable costs and expenses of litigation including, but not limited to,
15 attorneys' fees pursuant to statutory and common law.
- 16 5. Such other relief as the Court deems just.

17 ///

18 BROWNSTEIN & THOMAS, LLP

19 DATED: August 15, 2012


20
21 
22 MARK C. THOMAS
23 Attorney for Plaintiff
24 Robert Henley
25
26
27
28

EXHIBIT A



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 | Videophone (916) 226-5285 | TDD (800) 700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

August 15, 2012

Robert Henley
119 Sucamore Ave.
South San Francisco, CA 94080

RE: 26828-13481 - Henley Robert - Right To Sue

Notice of Case Closure and Right to Sue

Dear Robert Henley:

This letter informs you that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 15, 2012 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Department of Fair Employment and Housing

cc: Maggie Timony, Agent for Service for Heineken USA, Inc.



CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
EMPLOYMENT

COMPLAINT OF DISCRIMINATION UNDER THE PROVISIONS OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

DFEH INQUIRY NUMBER:
26828-13481

COMPLAINANT NAME:
Robert Henley

TELEPHONE NUMBER:
(650) 219-3576

ADDRESS:
119 Sucamore Ave.

CITY/STATE/ZIP:
South San Francisco, CA 94080

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR
STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

RESPONDENT NAME:
Heineken USA, Inc.

AGENT FOR SERVICE NAME:
Maggie Timony

TELEPHONE NUMBER:
(914) 681-4100

ADDRESS (AGENT FOR SERVICE):
360 HAMILTON AVENUE, Suite 1103

CITY/STATE/ZIP:
White Plains, NY 10601

NO OF EMPLOYEES/MEMBERS: 500 DATE MOST RECENT DISCRIMINATION TOOK PLACE:
Jan 31, 2012

TYPE OF EMPLOYER:
Private Employer

CO-RESPONDENT(S):

NAME	ADDRESS	PHONE NUMBER

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right to sue. I understand that if I want a federal right to sue notice, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure and Right to Sue," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Immediate Right to Sue."

By submitting this complaint, I am declaring under penalty of perjury under the laws of the State of California that, to the best of my knowledge, all information contained in this complaint is true and correct, except matters stated on my information and belief, and I declare that those matters I believe to be true.

Dated August 15, 2012 At South San Francisco Verified By: Mark C. Thomas attorney for complainant

DFEH-300-030 (07/12)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DATE FILED: Aug 14, 2012
COMPLETED: Aug 15, 2012

STATE OF CALIFORNIA



CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
EMPLOYMENT

COMPLAINT OF DISCRIMINATION UNDER THE PROVISIONS OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

I ALLEGE THAT I EXPERIENCED:
Discrimination

ON OR BEFORE: Jan 31, 2012

BECAUSE OF MY Color, Race
ACTUAL OR
PERCEIVED:

AS A RESULT, I WAS: Terminated, Other
denied a merit pay raise

STATE WHAT YOU BELIEVE TO BE THE REASON(S) FOR DISCRIMINATION:

In June of 2001, Henley commenced his career with Heineken. He performed his job well and consistently received merit pay increases and bonuses. In approximately September 2008, Chris Brown ["Brown"] was hired to be Henley's supervisor. Heineken gives annual performance reviews each year. The performance review has two components. The first component is performance objectives, which is a purely quantifiable rating measuring whether the employee met his sales goals. The second component is competencies, which is more subjective rating system. The two components are combined based on a performance matrix to form an overall rating. In 2010 Brown completed Henley's performance review. Henley was given a "good" rating in his performance objectives, meaning he met his sales goals. However, he was given a "needs improvement" rating on his competencies. Based on the Heineken performance matrix, an employee who receives a "good" rating on the objective performance objectives and a "needs improvement" rating on the subjective competencies should receive an overall performance rating of "good." Thus, Henley should have received an overall performance result of "good." Brown, however, disregarded the performance matrix and gave Henley an overall performance rating of "needs improvement." As a result of this lower performance rating, Henley did not receive a salary increase in 2011. Shortly after the 2010 performance review was issued, on March 14, 2011 Brown placed Henley on a performance improvement plan purportedly based on the same subjective competencies contained in the 2010 performance review. The performance improvement plan set forth clear, non-subjective goals, Henley needed to meet to be taken off the performance improvement plan. Henley met the clear, non-subjective goals set forth in his performance improvement plan. As a result, on July 12, 2011 he was taken off the performance improvement plan. On or around September 2011, Henley received his mid-year review, which rated his performance as good. On or around January 31, 2012, Henley was called into a meeting with Brown. During the meeting, Brown told Henley that he would receive an overall performance rating of "needs improvement" for the 2011 year. Heineken has a policy that if an employee receives two performance improvements in a row the employee is terminated. Thus, Brown informed Henley that his employment was terminated because he received two overall "needs improvement" ratings in a row. Heineken's proffered reason for Henley's termination is a pretext to terminate him because of his race. Henley should not have received two overall "needs improvement" performance ratings in a row. Pursuant to Heineken's performance matrix, Henley should have received an overall good performance rating in 2010. Employees who were not African American were not downgraded on the subjective competencies component of the performance review. Furthermore, Heineken did not disregard the performance matrix to downgrade employees who were not African American on their overall performance rating. Henley is informed and believes and thereon alleges that Heineken has a practice and pattern of discriminating against African American employees. In the ten years Henley worked for Heineken, he was the only African American person ever hired and the only African American to work for Heineken out of the hundreds of employees that worked in Heineken's western region. As a result, Heineken discriminated against Henley by denying him a merit based pay raise in 2011 and terminating his employment in 2012.

EXHIBIT 3



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Aug-17-2012 10:08 am

Case Number: CGC-12-523249

Filing Date: Aug-17-2012 10:07

Filed by: RONNIE OTERO

Juke Box: 001 Image: 03728850

PROOF OF SERVICE OF SUMMONS AND COMPLAINT

ROBERT HENLEY VS. HEINEKEN USA, A NEW YORK CORPORATION et al

001C03728850

Instructions:

Please place this sheet on top of the document to be scanned.

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mark C Thomas, 215580 BROWNSTEIN & THOMAS 353 Sacramento St. Suite 1140 San Francisco, CA 94111 TELEPHONE NO.: (415) 986-1338 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY COUNTY OF SAN FRANCISCO 2012 AUG 17 AM 11:50 CLERK OF THE COURT BY: _____ DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000	
PLAINTIFF/PETITIONER: Henley DEFENDANT/RESPONDENT:	CASE NUMBER: CGC-12-523249
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: none

- At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
- I served copies of: Civil Case Cover Sheet, Summons, Complaint, Notice of Plaintiff, ADR Package

BY FAX

- Party served: Heineken USA, Inc., a New York Corporation
 - Person Served: CSC - Becky DeGeorge - Person authorized to accept service of process
- Address where the party was served: 2710 N Gateway Oaks Dr Ste 150
Sacramento, CA 95833
- I served the party
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 8/16/2012 (2) at (time): 2:56 PM
- The "Notice to the Person Served" (on the summons) was completed as follows:
 - on behalf of:

Heineken USA, Inc., a New York Corporation

under: CCP 416.10 (corporation)

7. Person who served papers

- Name: Tyler Dimaria
- Address: One Legal - 194-Marin
504 Redwood Blvd #223
Novato, CA 94947

c. Telephone number: 415-491-0606

d. The fee for service was: \$35.95

e I am:

- registered California process server.
 - Employee or independent contractor.
 - Registration No.: 2008-06
 - County: SACRAMENTO

- I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.
Date: 8/16/2012

Tyler Dimaria

(NAME OF PERSON WHO SERVED PAPERS)



(SIGNATURE)

EXHIBIT 4

K&L GATES LLP
10100 Santa Monica Boulevard
Seventh Floor
Los Angeles, California 90067
Telephone: 310.552.5000
Facsimile: 310.552.5001

Thomas H. Petrides (SBN 117121)
Nancy C. Hagan (SBN 273981)

Attorneys for Defendant Heineken USA Inc.

ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 13 2012

CLERK OF THE COURT
BY: WESLEY RAMIREZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ROBERT HENLEY, an individual
Plaintiff,

vs.

HEINEKEN USA, a New York corporation, and
DOES 1-50,
Defendants.

Case No. CGC-12-523249

**ANSWER OF DEFENDANT HEINEKEN
USA INC. TO COMPLAINT OF
PLAINTIFF ROBERT HENLEY**

[Assigned to the Honorable Katherine Feinstein,
Dept. 206]

1 Defendant Heineken USA Incorporated ("Heineken"), erroneously named as "Heineken
2 USA," hereby answers the complaint of Plaintiff Robert Henley ("Plaintiff") filed on August 15,
3 2012 (the "Complaint") alleging race discrimination as follows:

4 **GENERAL DENIAL**

5 In answer to Plaintiff's Complaint, Heineken submits this general denial pursuant to
6 California Code of Civil Procedure Section 431.30(d), and hereby generally denies each and every
7 allegation contained in Plaintiff's Complaint, and further denies that Plaintiff has been injured in the
8 amount or manner alleged or in any other manner whatsoever. Additionally, Heineken asserts the
9 following affirmative defenses as set forth below:

10 **AFFIRMATIVE DEFENSES**

11 Heineken asserts the following affirmative defenses, each as a separate and distinct
12 affirmative defense. To the extent that additional affirmative defenses are discovered during the
13 course of the litigation, Heineken reserves the right to plead such additional affirmative defenses.
14 Insofar as any of the following affirmative defenses expresses a denial of an element of the claims
15 alleged against Heineken, such expression is in no way intended as a concession that Plaintiff is
16 relieved of his burden to prove each and every element of any such claim.

17 **FIRST AFFIRMATIVE DEFENSE**

18 (Failure to State a Claim)

19 Heineken alleges that the Complaint fails to state facts sufficient to constitute a cause of
20 action against Heineken.

21 **SECOND AFFIRMATIVE DEFENSE**

22 (Failure to Exhaust Administrative Remedies)

23 Heineken alleges that to the extent Plaintiff's Complaint seeks to recover any damages or
24 relief with respect to any claims that Plaintiff has not previously filed a complaint with the California
25 Department of Fair Employment and Housing ("DFEH") or the Equal Employment Opportunity
26 Commission ("EEOC"), then such claims are barred because Plaintiff has failed to timely exhaust his
27 administrative remedies with respect to those claims as required by law.
28

1 **THIRD AFFIRMATIVE DEFENSE**

2 (Statute of Limitations)

3 Heineken alleges that to the extent Plaintiff's Complaint seeks to recover any damages or
4 relief with respect to any claims that Plaintiff has not timely filed his Complaint within the applicable
5 statute of limitations, including, but not limited to, California Code of Civil Procedure Sections 337,
6 338, 339, 340, 340.2, and 343 and California Government Code Sections 12960(d) and 12965, then
7 such claims are barred by the applicable statute of limitations.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 (Workers' Compensation Exclusive Remedy)

10 Heineken alleges that to the extent Plaintiff seeks damages or makes a claim on account of
11 alleged physical and/or emotional injury arising from his employment, Plaintiff's exclusive remedy is
12 provided by the California Workers' Compensation Act, California Labor Code sections 3600, *et*
13 *seq.*, which acts as a complete bar to Plaintiff's civil claims.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 (Legitimate Business Reasons)

16 Heineken alleges that the cause of action alleged in Plaintiff's Complaint is barred because
17 any employment actions allegedly taken by Heineken (to the extent performed at all), are non-
18 actionable and/or privileged because they were taken for legitimate business reasons and such actions
19 were not pretextual or in violation of any law or statute.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 (Failure to Utilize Preventative/Corrective Measures; Avoidable Consequences)

22 Heineken alleges that Plaintiff's employer took reasonable preventative and corrective
23 measures, including having proper discrimination and harassment policies and complaint procedures
24 in place, that Plaintiff unreasonably failed to utilize the preventative and corrective measures that
25 Plaintiff's employer provided, and reasonable use by Plaintiff of Plaintiff's employer's procedures
26 would have prevented at least some of the harm that the Plaintiff alleges he suffered (all of which
27 allegations are denied by Heineken). Heineken is therefore not liable for the alleged claims and/or
28 Plaintiff's damages should be limited or reduced accordingly.

SEVENTH AFFIRMATIVE DEFENSE

(Mixed Motive)

Heineken alleges that if Plaintiff is able to prove that both lawful and unlawful factors motivated the employment decision(s) complained of (which Heineken denies that any employment decisions were motivated by any unlawful factors), Heineken asserts that it would have taken the same employment action(s) absent the unlawful motivating factor(s).

EIGHTH AFFIRMATIVE DEFENSE

(Lack of Causation)

Heineken alleges that to the extent Plaintiff has incurred any damages (which Heineken denies), such alleged damages were not proximately or legally caused by Heineken.

NINTH AFFIRMATIVE DEFENSE

(After Acquired Evidence)

Heineken alleges that to the extent Heineken subsequently acquires any evidence of wrongdoing by Plaintiff, which wrongdoing would have materially affected the terms and conditions of Plaintiff's employment or would have resulted in Plaintiff either being demoted or terminated, such after-acquired evidence shall bar Plaintiff on liability or damages or shall reduce such claims as provided by law.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Heineken alleges that to the extent Plaintiff claims he has suffered any damages by reason of the allegations in the Complaint (which allegations are denied by Heineken), Plaintiff should not recover for such damages, or they should be reduced accordingly, because by Plaintiff's own acts and omissions he has failed to properly mitigate and/or avoid those damages.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Support Claim for Punitive Damages)

Heineken alleges that Plaintiff's Complaint fails to state facts sufficient to support a claim for punitive damages against Heineken and fails to establish that any purported act complained of in the

1 Complaint was committed, ratified or approved by an officer, director, or managing agent of
2 Heineken.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 (Constitutional Limit on Punitive Damages)

5 Heineken alleges that Plaintiff's claims for punitive damages are barred by the contract clause
6 (Article I, Section 10, clause 1), the due process clause (Fifth Amendment, Fourteenth Amendment,
7 Section 1), and the excessive fines clause (Eighth Amendment) of the United States Constitution, and
8 the corresponding provisions of the Constitution of the State of California.

9 **RESERVATION OF RIGHTS TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES**

10 Heineken has not knowingly and intentionally waived any applicable affirmative defense and
11 reserves the right to assert and rely on any such other applicable affirmative defenses as any may
12 become available or apparent during the conduct of discovery.

13 WHEREFORE, Heineken prays for judgment as follows:

- 14 1. That Plaintiff take nothing by his Complaint;
- 15 2. That Heineken be awarded judgment in its favor and against Plaintiff;
- 16 3. For its costs of suit incurred herein, including reasonable attorneys' fees; and
- 17 4. For such other and further relief as the Court may deem just and proper.

18 K&L GATES LLP

19 Dated: September 12, 2012

20 By: 

21 Thomas H. Petrides
22 Nancy C. Hagan
23 Attorneys for Defendant Heineken USA Inc.

Robert Henley v. Heineken USA, Inc. et al.
San Francisco Superior Court Case No. CGC-12-523249

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is **K&L GATES, LLP, Four Embarcadero Center, Suite 1200, San Francisco, CA 94111.**

On September 13, 2012, I served the foregoing document(s):

DEFENDANT HEINEKEN USA, INC.'S ANSWER TO PLAINTIFF ROBERT HENLEY'S COMPLAINT

together with an unsigned copy of this declaration, on plaintiff's counsel in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed and sent as follows:

COUNSEL FOR PLAINTIFFS

Mark C. Thomas, Esq.
BROWNSTEIN THOMAS, LLP.
353 Sacramento Street, Suite 1140
San Francisco, CA 94111
Telephone: (415) 986-1338
Facsimile: (415) 986-1231

☒ **BY MAIL (By Following Office Business Practice):** I am readily familiar with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I placed such envelope(s) for collection and mailing on that date following ordinary business practice.

☐ **BY PERSONAL SERVICE AT ATTORNEY'S OFFICE:** I caused such envelope(s) to be personally delivered to the offices of the addressee(s) by a licensed messenger, either by leaving it with a receptionist or with a person having charge thereof, or if there was no person in the office, by leaving it in a conspicuous place in the office between the hours of 9 a.m. and 5 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 13, 2012, at San Francisco, California.



Lesbia M. Duarte